IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9399 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? YES

2 To be referred to the Reporter or not ? YES

3 Whether their Lordships wish to see the fair copy of the judgment ? No

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? No

5 Whether it is to be circulated to the civil judge ? No

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AMTHABHAI VARVABHAI RABARI & 4 - Petitioner(s)
Versus
PRAHLADJI VALAJI RAJPUT & 15 - Respondent(s)

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Appearance :
MR PS CHAMPANERI for Petitioners
MR BS PATEL for Respondent : 1,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 29/04/2006

ORAL JUDGMENT

(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)

1. By this petition under Article 226 and 227 of the Constitution of India the petitioners

challenge the judgment and order dated 15th April 2006 passed by the Gujarat State Co-operative Tribunal, Ahmedabad (hereinafter referred to as the Tribunal) whereby the Tribunal has allowed the Election petition filed by the respondents No.1 to 11 herein and held that the nomination papers of the respondents No.1 to 11 have been wrongly rejected; that the decision declaring the opponents No.2 to 9 in the Election Petition, (namely, the petitioners and 3 others) as having been elected uncontested on 26/7/2005 was not in consonance with the provisions of law and the election rules and has set aside the election of the 11 candidates of the agriculturists' constituency of the respondent No.16, Siddhpur Taluka Co-operative Purchase and Sales Union Limited, Siddhpur (hereinafter referred to as the respondent Union) who had been declared elected uncontested.

2. The facts as emerging from the record of the case are that the respondent Union is a specified co-operative society within the meaning of section 74C(1)(iv)(b) of the Gujarat Co-operative Societies Act, 1961 (the Act). Accordingly, the election of the members of the managing committee and of the officers by the committee of the said society is subject to the provisions of Chapter XI-A of the Act and is required to be conducted in the manner laid

down by or under that Chapter. The Government of Gujarat has in the exercise of powers under section 168 read with sub-section (2) of section 145G, sub-section (4) of section 145U and section 145Y of the Act, framed rules called the Gujarat Specified Co-operative Societies Elections to Committees Rules, 1982 (hereinafter referred to as the Rules), which govern the elections of Committees of specified societies.

3. Byelaw No.28(1) of the Byelaws of the respondent Union provides for the constitution of a Managing committee consisting of 17 members, out of which 11 belong to the agriculturists constituency. The term of the Managing committee of the respondent Union was expiring in 2005, hence election of the new Managing committee was required to be held. Accordingly, the Election Officer and Mamlatdar Siddhpur, respondent No.12 herein, declared the election programme for election of the members of the managing committee of the said society. As per the voters list declared by the Election Officer the respondent Union had 45 voters. The names of the petitioners as well as the respondents No.1 to 11 were included in the said voters list. The dispute involved in the present petition pertains to the election of 11 members of the agriculturists' constituency of the respondent Union.

4. In all 22 candidates presented their nomination papers for the said election. Scrutiny of the nomination papers was carried out on 21st July 2005. It appears that no information regarding nomination papers having been rejected was conveyed to the candidates till the completion of office hours on 21st July 2005. It was only when the petitioners and respondents No. 13 to 15 were declared as elected uncontested, that the respondents No.1 to 11 came to know that the respondent No.12, had rejected their nomination papers. Thereafter the respondents No.1 to 11 called upon the Election Officer to supply a copy of the order rejecting their nomination papers, whereupon they were informed by the Election Officer that their nomination papers were not in consonance with Rule 5(2) of the Election Rules of the respondent Union, hence, the same had been rejected. It was the case of the respondents No.1 to 11 that the nomination papers of the opponents No.2 to 9 who had been declared as elected also suffered from the same deficiency as was pointed out in their nomination papers. Being aggrieved by the aforesaid rejection of their nomination papers as well as the declaration that the opponents No.2 to 9 had been elected uncontested, the respondents No.1 to 11 approached this Court by way of a writ petition being Special Civil Application No.15645 of 2005. This Court by an

order dated 2nd June, 2005 relegated the petitioners therein, to the alternative remedy before the Tribunal by way of an election petition. Accordingly, the respondents No.1 to 11 filed an election petition before the Tribunal under the provisions of section 145U of the Act.

5. Before the Tribunal it was the case of the respondents No.1 to 11 (hereinafter referred to as the election petitioners) that the respondent Union had been established in 1972; that its election Rules were approved on 22.2.1973; that the Gujarat Specified Co-operative Societies Elections to Committees Rules, 1982 were enacted and brought into force in 1982, hence, thereafter, the Election Rules of the respondent Union ceased to exist. That the Election Officer has disregarded the provisions of section 74C of the Act. That despite the fact that it is mandatory to conduct the election of the members of the managing committee of specified societies in accordance with the provisions of the Gujarat Specified Co-operative Societies Elections to Committees Rules, 1982, the Election Officer has applied the provisions of Rule 5(2) of the Election Rules of the respondent Union, which is not legal. It was submitted that the provisions of Rule 28(2) of the Rules has not been taken into consideration. It was pointed

out that in case of some of the candidates nomination papers had been accepted despite the fact that even in their case there was duplication of proposer and seconder. It was contended that there were in all 22 candidates and a total of 45 voters, hence, it was not practically possible for each candidate to have a different proposer and seconder. Attention was drawn to the provisions of Rule 19(5) of the Rules to submit that the candidates were not informed regarding the rejection of their nomination papers and it was only on the next day when the final voters list was declared that they came to know of the rejection of their nomination papers. It was submitted that their nomination papers had wrongly been cancelled and the opponents No.2 to 9 had wrongly been declared as elected uncontested.

6. Pursuant to the issuance of summons by the Tribunal, the petitioners as well as the Election Officer put in their appearance. The respondent Union which was originally not joined as a party was subsequently impleaded as opponent No.10 in the proceedings before the Tribunal.

7. It was the case of the Election Officer that in all 22 nomination papers had been received. That scrutiny was fixed on 21.7.2005. It was further submitted that by a communication dated

19th July, 2005 it had been informed that the election shall be held in accordance with the procedure laid down under Rule 18 and 19 of the Rules. That Rule 18 and 19 provided that if the byelaws provide for any disqualification the same should be taken into consideration. That the suggestions and objections received were taken into consideration. That under the provisions of Rule 23(2) of the Rules read with Rule 5(2) of the Election Rules of the respondent Union, a voter could propose and second only one candidate. Accordingly, those papers which were received prior in point of time were kept in view while taking a decision to accept or reject the nomination papers. That the nomination papers which were not in consonance with law, namely where there was duplication of the proposer and seconder, were rejected. Accordingly the nomination papers of the 11 election petitioners were rejected.

8. On behalf of the petitioners oral evidence was led by examining witnesses, whereas the election petitioners sought to rely upon the record of the case. On behalf of the petitioners, it was contended that the requisite Court fees had not been paid. That it was the society which was the member of the respondent Union; that the Election Petition had not been filed on behalf of the Society nor was any resolution produced in that regard,

hence the petition was required to be rejected. It was submitted that the election rules of the respondent Union had been approved by the District Registrar and had the force of law. That merely because of the framing and coming into force of the Rules of 1982, the election rules of the respondent Union do not cease to exist. That if the nomination papers of opponents No.2 to 9 have been wrongly accepted, it is not necessary to set aside the entire elections.

9. The Tribunal after taking into consideration the rival contentions and considering the scheme of the Act and the Rules found that the nomination papers of the election petitioners were wrongly rejected and held that decision dated 26th July, 2005, whereby the opponents No.2 to 9 had been declared as elected uncontested was not in consonance with the Act and the Rules. Accordingly, the Tribunal vide its impugned order dated 15th April, 2006 set aside the election of 11 members of the Agriculturists' constituency of the respondent Union.

10. Being aggrieved by the aforesaid order dated 15th April 2006, the petitioners who were opponents No.2, 7, 5, 3 and 8 respectively in the Election Petition have challenged the same by way of the present petition.

11. Heard Mr. P.S. Champaneri, learned Advocate for the petitioners and Mr. B.S. Patel learned Advocate for the respondents No.1 to 11.

12. Learned Advocate. Mr. Champaneri submitted that the Tribunal had committed an error in entertaining the election petition which was not in consonance with the provisions of section 145V read with Rule 75 and 76 of the Rules. Drawing attention to the provisions of section 145 V it was submitted that the election petitioners had not paid the deposit amount as required under the said section. It was submitted that initially the election petitioners had deposited only Rs.500/- despite the fact that there were eleven election petitioners; that the Tribunal ought to have rejected the petition on that count alone instead of directing that Rs.5000/ be paid towards the cost of hearing at the time of final hearing of the petition. That the election petition was therefore, not presented in accordance with the provisions of section 145V and was required to be rejected on that count alone.

13. It was submitted that the Tribunal has erred in setting aside the election of 11 returned candidates of the agriculturists' constituency of the respondent Union in the absence of all

returned candidates being parties to the petition.

14. It was next contended that the election petition was required to be presented in accordance with the provisions of section 145W, however, the election petitioners failed to do so inasmuch as the petition was not verified in accordance with the provisions of clause (c) of sub-section (1) of section 145W of the Act. Attention was drawn to the provisions of Rule 74 of the Rules which provide that no election shall be called in question, except by an election petition presented to the Government in accordance with the provisions of section 145U and the said rules. Attention was also drawn to the provisions of sub-rule (2) of Rule 77 of the Rules which provides that the Government may dismiss an election petition which does not comply with the provisions of rule 75. It was pointed out that sub-rule (2) of rule 75 of the Rules provides that the every copy of the election petition shall be attested by the petitioner under his own signature to be a true copy of the petition. It was submitted that the said provisions had not been complied with; hence the election petition ought to have been dismissed for non-compliance with the provisions of rule 75 of the Rules.

15. It was further submitted that section 145-F

provides for disqualification for membership. That in view of the provisions of clause (e) of sub-section (1) of section 145-F, a person shall be disqualified for being elected as, and for being a member of the committee of any specified society if he is also disqualified by or under any other provision of this Act. That the election petitioners were disqualified under the provisions of Rule 5(2) of the Election Rules of the respondent Union, hence, under the provisions of section 145-F of the Act, the election petitioners were disqualified for being elected as members of the respondent Union. Hence, the nomination papers of the election petitioners had been rightly rejected and the Tribunal was wrong in setting aside the rejection of their nomination papers.

16. It was also submitted that the Tribunal has committed an error in interpreting the provisions of Rule 18, 19 and 23 of the Rules read with Rule 5(2) of the Election Rules of the respondent Union. It was submitted that the Election Rules of the respondent union had been approved by the District Registrar at the relevant time and that merely because the Gujarat Specified Co-operative Societies Elections to Committees Rules, 1982 had come into force, the said Rules did not cease to exist. That the Election Officer had rightly taken into consideration the provisions of rule

5(2) of the Election Rules of the respondent Union along with rule 18 and 19 of the Rules and rejected the nomination papers of the election petitioners.

17. Mr. B.S. Patel, learned Advocate for the election petitioners referred to the provisions of section 74C of the Act to point out that the election of members of the committees of specified societies were to be conducted in the manner laid down by or under Chapter XI-A of the Act. Mr. Patel pointed out the provisions of section 145-Y which provides for powers to make rules for the purposes of Chapter XI-A. Under the said section the State Government is empowered to make rules to regulate all or any of the matters relating to the various stages of the election. It was submitted that accordingly statutory rules being Gujarat Specified Co-operative Societies Elections to Committees Rules, 1982 have been framed to regulate the elections of specified co-operative societies. Reliance was placed upon a decision of this court rendered in the case of Ambalal Manilal Makwana v. Khambhat Taluka Sahkari Kharid Vechan Sangh Ltd., [1975] 16 GLR 382, to submit that any bye-law which was in contravention of the statutory rules was ultra vires and the grant of sanction by the Registrar to such bye-law does not make it valid. It was submitted that the election

officer could not have rejected the nomination papers for non-compliance with the provisions of rule 5(2) of the Election Rules of the respondent Union which were contrary to the statutory rules. That the Tribunal was justified in holding that the nomination papers of the election petitioners were wrongly rejected and setting aside the election of all the members of the agriculturists' constituency.

18. At the outset it may be pertinent to refer to the various provisions of the Act and the Rules which fall for consideration. Section 74C of the Act which makes provision for conduct of elections of committees and officers of certain societies and term of office of members of committees, lays down that the election of members of the committees and of the officers by the committee, of the societies of the categories mentioned therein shall be subject to the provision of Chapter XI-A and shall be conducted in the manner laid down by or under that Chapter. One of the categories of societies mentioned therein at Clause (iv) (b) are "All Taluka Co-operative Sale and Purchase Organisations." The respondent Union is a society falling under the said category, hence, the elections of the managing committee of the respondent Union is required to be conducted in the manner laid down under Chapter XI-A of the

Act.

19. Chapter XI-A of the Act makes provision for “Elections of Committees and Officers of Certain Societies” and consists of Sections 145A to 145Z. Section 145A provides that all sections of Chapter XI-A except section 145Z shall apply to elections to committees of societies belonging to the categories specified in section 74C. Clause (c) of section 145B defines “specified society” to mean a society belonging to any of the categories specified in section 74C.

20. Section 145W provides for the “Contents of petitions”. Part of section 145W of which breach is alleged reads as under:

> *“(1)An election petition shall-*
>
> *(a) XXXXXXXX*
> *(b) XXXXXXXX*
>
> *(c) be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (V of 1908) for the verification of pleadings.*
>
> *XXXXXXX*
>
> *(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.*

21. Section 145Y which provides for powers to make rules for the purposes of Chapter XI-A reads as

under:

> *"Without prejudice to any other power to make rules contained elsewhere in this Act, the State Government may make rules consistent with this Act generally to provide for and to regulate all or any of the matters relating to the various stages of the elections (including preparation of list of voters.)"*

22. In exercise of the powers conferred by section 168 read with sub-section (2) of section 145G, sub-section (4) of section 145U and section 145Y of the Act, the Government of Gujarat has framed rules called the "Gujarat Specified Co-operative Societies Elections to Committees Rules, 1982."

23. Sub-rule (3) of Rule (1) makes the said rules applicable to the elections to the Committees of specified societies. Clause (b) of Rule 2 defines constituency to mean an electoral division, if any, as specified in the bye-laws of the specified society.

24. Rule 18 of the Rules insofar as the same is relevant for purpose of the present petition reads as under:

> *"18. Nomination of candidates.- (1) Any person may be nominated as a candidate for election to fill a seat, if he is qualified to be chosen to fill that seat under the provisions of the Act, rules and bye-laws and his name is entered in the list of*

voters:
xxxxx
(2) xxxxx

(3) Any person whose name is entered in the list of voters may be a proposer or a seconder for nominating a candidate for election:
Provided that, in the case of elections from the constituency of societies the proposer and the seconder shall be from the same constituency.

(4)xxxxx
(5)xxxxx

25. Rule 19 of the Rules as is relevant for the present purpose reads as under:

"19. Presentation of nomination paper and requirements for valid nominations.- (1) On or before the date appointed under sub-rule (1) of rule 16, each candidate shall either in person or by his proposer deliver to the Returning Officer during the time and at the place specified in the order made under the said rule, a nomination paper completed as provided by rule 18 and signed by the candidate and by two voters of his constituency one of whom shall proposer and the other as seconder.

(2) Any person who is not subject to any disqualification as a voter under the Act, rules or bye-laws and whose name is entered in the list of voters for the constituency for which the candidate is nominated, may subscribe as proposer and as seconder.

(3) XXXXXXXX

(4) On the presentation of a nomination paper the Returning Officer shall satisfy himself that the names and the numbers of the candidate and his proposer and seconder as entered in the nomination paper are the

same as those entered in the list of voters referred to in rule 7. If a nomination paper is rejected under this sub-rule, the Returning Officer shall record thereon his reasons for rejecting the same, and in that case, the candidate may deliver a fresh nomination paper subject, however, to all the provisions of this rule:

XXXXXXXXXX

26. Rule 23 of the Rules as is relevant for the present purpose reads as under:

"Scrutiny of nomination papers.- (1) on the date fixed for the scrutiny of nomination papers under rule 16, the candidates, their election agents, one proposer of each candidate, and one other person duly authorized in writing by each candidate, but no other person, may attend at the time and place appointed in this behalf under rule 16 and the Returning Officer shall give them all reasonable facilities for examining the nomination papers of all candidates, which have been delivered as required under rule 19.

(2) The Returning Officer shall then examine the nomination papers and shall decide all objections which may be to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds, that is to say:-

(a) that the candidate is disqualified for being chosen to fill the seat by or under the Act, Rules or bye-laws;
(b) that the proposer or seconder is disqualified from subscribing a nomination paper;
(c) that there has been a failure to comply with any of the provisions

of rule 19 and 21;

(d) that the signature of the candidate or the proposer on the nomination paper is not genuine.

(3) XXXXXX

(4) XXXXXX

(5) The Returning Officer shall hold the scrutiny on the date appointed in this behalf under rule 16 and shall not allow any adjournment of the proceedings, except when such proceedings are interrupted or obstructed by riot or open violence or by cause beyond his control;

Provided that, in case any objection is raised by the Returning Officer or is made by any other person, the candidate concerned may be allowed time to rebut it not later than the next day, and the Returning Officer shall record his decision on the date to which the proceedings have been adjourned.

(6) The Returning Officer shall endorse on each nomination paper his decision accepting or rejecting the same, and if the nomination paper is rejected shall record in writing a brief statement of his reasons for such rejection.

(7) XXXXX.

27. The respondent Union being a specified society as envisaged under section 74C of the Act, the elections of its managing committee is required to be conducted under the provisions of Chapter XI-A of the Act. Chapter XI-A of the Act comprises of Sections 145A to 145Z. Section 145Y empowers the State Government to make rules to provide for and regulate all or any of the matters relating to the various stages of

the elections. Accordingly the State Government has framed the Gujarat Specified Co-operative Societies Elections of Committees Rules, 1982 which provide for the manner in which the elections to the committees of specified societies are to be conducted.

28. In the facts of the present case admittedly the petitioners, the election petitioners as well as the proposers and seconders of the candidates who had filed their nomination papers were members of the respondent Union whose names found place in the voters list. The Election Officer has rejected the nomination papers of the election petitioners on the sole ground of non-compliance with the provisions of Rule 5(2) of the Election Rules of the respondent Union. Apart from the fact as to whether the Election Officer had duly followed the procedure provided under the rules prior to and upon rejecting the nomination papers of the election petitioners, the moot question that arises for consideration is as to whether the ground on which the nomination forms were rejected is a valid ground.

29. It is the case of the petitioners that under the provision of Rule 5(2) of the Election Rules of the respondent Union, a voter can propose or second the candidature of only one person. The learned Advocate for the petitioner

was not in a position to produce the relevant rules of the respondent Union for the perusal of the Court. However, the said position is not disputed by the learned Advocate for the respondents No.1 to 11. But, it is stated that the said Rules were in force prior to the enactment of statutory rules governing the conduct of elections of the managing committees of specified societies. That upon the coming into force of the Rules of 1982, the Election Rules of the respondent Union were rendered redundant and could not be relied upon.

30. From the facts emerging from the record it appears the prior to the enactment of statutory rules governing the conduct of elections to the committees of specified societies, the respondent Union had its own Rules which were in the nature of bye-laws, which provided for elections to the managing committee of respondent Union. The said Rules were approved on 22.2.1973 whereupon the same would have governed the conduct of elections to the committees of the respondent Union at the relevant time. However, upon the coming into force of the statutory rules in the form of the Rules of 1982, the said Rules would no longer have any force. Upon a conjoint reading of the provisions of the Act and the Rules, it is apparent that the elections to the committees of specified societies are required to be

conducted in the manner provided under Chapter XI-A of the Act and the statutory Rules framed thereunder.

Therefore, what has to be seen is as to whether the nomination papers submitted by the election petitioners were rightly rejected by the Election Officer. Undisputedly the nomination forms have been rejected on the sole ground that the same is not in consonance of Rule 5(2) of the Election Rules of the respondent Union. In so far as the statutory rules are concerned sub-rule (1) of rule 18 of the rules provides that any person may be nominated as a candidate for election to fill a seat, if he is qualified to be chosen to fill that seat under the provisions of the Act, rules and bye-laws and his name is entered in the list of voters. Nothing is pointed out on behalf of the petitioners to show that the election petitioners did not fulfill the said condition. Sub-rule (3) of rule 18 stipulates that any person whose name is entered in the list of voters may be a proposer or a seconder for nominating a candidate for election; the only caveat being that in the case of elections from the constituency of societies the proposer and the seconder shall be from the same constituency.

31. Upon a plain reading of sub-rule 3 of rule 18

of the Rules, it is apparent that what the rule envisages is that the person who proposes or seconds the candidature of a member, must be a person whose name is entered in the list of voters. From the language employed in the rule no other requirement can be read into it. Except that the proviso to the rule stipulates that in case of elections from constituency of societies the proposer and the second are required to be from the same constituency. In the present case the election petitioners belong to the agriculturist constituency and it is nobody’s case that the proposer and seconder do not belong to the said constituency.

32. A further contention is raised that in case the same person is a proposer or a seconder in case of more than one candidate, the same would be a breach of the provisions of Rule 5(2) of the Election Rules of the respondent Union, and as such, the candidate in whose case such duplication of proposer or seconder takes place would incur a disqualification so as to fall within the purview of Section 145F of the Act and would thus be disqualified for being elected as or for being a member of the committee of the specified society. It is contended that breach of Rule 5(2) of the said Rules would amount to a disqualification by or under any other provision of the Act as envisaged under clause (e) of sub-section (1)

of section 145F of the Act. The said contention is beyond comprehension, inasmuch as it is difficult to understand as to how an alleged deficiency in a nomination form would amount to a disqualification of the candidate under the provisions of the Act. The said contention has to be stated only to be rejected. Moreover, sub-rule (2) of Rule 23 of the Rules enumerates the grounds on which a nomination paper can be rejected. Needless to state that the breach of provisions of Rule 5(2) of the Election Rules of the respondent Union does not find place among the said grounds. When the statute itself specifies the grounds on which a nomination paper can be rejected, it is not open to the Election Officer to reject the nomination papers on grounds extraneous to the statute.

33. Upon a conjoint reading of the provisions of section 74C, Chapter XI-A of the Act and the rules framed thereunder, it is apparent that Chapter XI-A and the Rules of 1982 form a complete code by themselves insofar as the conduct of elections to the committees of specified societies is concerned, and resort need not be had to the bye-laws of the individual society in this regard. The provisions of non-statutory rules cannot be permitted to override the provisions of statutory rules to read in a requirement not

contemplated under the Rules. Once the nomination papers submitted by a candidate fulfill the requirements laid down under the rules, the election officer is bound to accept the same and cannot reject the same on grounds that are alien to the statute.

34. As can be seen from the order of the Tribunal, the Tribunal has considered the relevant provisions of the Act and the Rules. The Tribunal has held that under the provisions of rule 18 a person whose name is entered in the voters list can be nominated as a candidate to the elections; that under the provisions of rule 18(3), any person whose name in entered in the voters list can be a proposer or seconder for nominating a candidate for election, the only condition being that the candidate, the proposer and seconder should all belong to the same constituency. The Tribunal has found as a matter of fact that in the present case both the proposer as well as seconder are voters belonging to the same constituency, namely the agriculturist constituency. The Tribunal observed that in case any deficiency was found in the nomination forms of the candidates it was the duty of the Election Officer under the provisions of Rule 19 of the Rules to draw the attention of the candidates so as to enable them to rectify the same. The Tribunal held that when the statute provided for the manner

in which the elections are to be conducted the Election Officer was required to follow only the said rules and could not have rejected the nomination papers on the ground of non-compliance of the provisions of rule 5(2) of the election rules of the respondent Union. The Tribunal found various irregularities in the manner in which the elections had been conducted. The Tribunal found that reliance placed upon clause (b) of sub-rule (2) of rule 23 of the Rules to justify the rejection of the nomination forms of the election petitioners was misplaced in that the said clause provides that a nomination form may be rejected on the ground that the proposer or seconder is disqualified from subscribing a nomination paper. That the factors for disqualification are provided under the provisions of section 145F and it is only those factors which can be taken into account. That the fact that the same person has proposed or seconded the nominations of more than one candidate cannot be said to be a disqualification as contemplated under the said provision. The aforesaid findings of the Tribunal are in consonance with the provisions of the Act and the Rules framed thereunder. In the circumstances no fault can be found with the order of the Tribunal in holding that the nomination papers of the election petitioners were wrongly rejected by placing reliance on the provisions of rule 5(2) of the Election

Rules of the respondent Society.

35. As regards the contention that the election petition ought to have been rejected on account of breach of the provisions of section 145V of the Act in that initially the election petitioners had deposited only Rs.500 despite there being eleven petitioners, the Tribunal has found that the same is only a technical default which can be cured. Accordingly, the Tribunal has directed the election petitioners to deposit the remaining amount of Rs.5000/- and remove the deficiency.

36. Section 145U of the Act provides for disputes relating to elections to be submitted to the Tribunal. Section 145V provides for deposit of cost for hearing and power to award cost and reads as under:

> *"A petitioner presenting an election petition under section 145U shall pay a deposit not exceeding Rs.500 as the Tribunal may direct towards the cost for hearing the petition. Unless the petitioner deposits the same as aforesaid, the petition shall be dismissed. Subject to such conditions as may be prescribed, at the time of deciding the petition, the Tribunal shall assess the costs of the hearing of the petition and shall require the petitioner or the respondents, or both as the case may be, to defray the whole or in such proportion as it thinks fit, the costs of the petition including the deposit so made. Such sum as the Tribunal may assess as the cost to the Tribunal of hearing the petition (but not*

exceeding Rs.500 in any case) shall be credited to the Government."

37. Upon a plain reading of the aforesaid provision, there is nothing to show that a minimum amount of Rs.500/- is required to be paid by each election petitioner. In fact the language employed by the statute is "a deposit not exceeding Rs.500". In the facts of the case as a consolidated election petition had been filed, the deposit of Rs.500/- at the initial stage cannot be said to be a breach of such nature as to entail dismissal of the petition. The section itself envisages the assessment of costs of hearing by the Tribunal at the time of deciding the petition. Hence, there cannot be said to be any infirmity in the order of the Tribunal in directing the election petitioners to deposit Rs.5000/- towards the deficit fees.

38. As regards the contention regarding non-compliance of the provisions of section 145W namely that the election petition was not verified in accordance with the provisions of clause (c) of sub-section (1) of section 145W of the Act as well as non-compliance of the provisions of sub-rule 75 of the rules which provides that every copy of the election petition shall be attested by the petitioner under his own signature to be a true copy of the petition, the same are disputed questions of fact, which admittedly were not raised

before the Tribunal. Hence, the petitioners cannot be permitted to raise the said contentions for the first time before this Court. Hence, the said contention does not deserve acceptance.

39. As regards the contention that the election petitioners were disqualified under the provisions of rule 5(2) of the Election Rules of the respondent Union, hence, the provisions of section 145F would be attracted and the election petitioners would entail disqualification for being members of the committee of the respondent Union; the same does not merit acceptance. Reliance is sought to be placed upon clause (e) of sub-section (1) of section 145F which provides for disqualification in case the member is also disqualified by or under any other provision of the Act. It is sought to be contended that the election rules of the respondent Union having been approved under the provisions of the Act, a disqualification under the said rules would amount to disqualification under any other provision of the Act. The contention is thoroughly misconceived; even if it is assumed for a moment that the provisions of rule 5(2) are applicable, all that the same provide is that the same member cannot propose or second the candidature of more than one candidate. The same do not provide for any disqualification in

the nature contemplated under the provisions of section 145F.

40. As regards the contention that the election of all the 11 seats of the agriculturists' constituency could not have been set aside in the absence of all the returned candidates being impleaded as parties; it is for those candidates who were not impleaded as parties to challenge the order of the Tribunal if they are aggrieved. It is not open to the petitioner to challenge the order of the Tribunal on this ground because, insofar as the petitioners are concerned, they were impleaded as respondents in the election petition and heard before the passing of the impugned order.

41. In the facts and circumstances stated above, no infirmity can be found in the order of the Tribunal.

42. In the result the petition fails, and the same is summarily rejected with no order as to costs.

[M.S.SHAH, J.]

[HARSHA DEVANI, J.]

parmar*